

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 71 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

HARESHKUMAR PREMSHANKAR PANDYA

Versus

HARSHABEN CHHOTALAL

Appearance:

MR AY KOGZE for Petitioner

MR DV SHAH for Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/12/98

ORAL JUDGEMENT

#. Shri Hareshkumar Premshankar Pandya, appellant present in-person, who has been identified by his counsel Shri A.Y.Kogze.

#. Smt. Harshaben Chhotalal, respondent is present in-person, who has been identified by Shri D.V.Shah, her counsel.

#. This second appeal is filed by the husband-appellant before this Court under Section 100 of the C.P.C. challenging thereunder the judgment and decree of both the courts below under which his application for divorce has been rejected.

#. The learned Assistant Judge, Narol, at Ahmedabad, during the pendency of H.M.P. No.36/85 has made all efforts to see that the parties are reunited but all the efforts failed. During the pendency of the First Appeal in the Court of 2nd Joint District Judge, Ahmedabad (Rural), being Regular Civil Appeal No.19/88, the first appellate Court has also made efforts to reconcile the dispute between spouses but those efforts were also not proved to be fruitful.

#. During the pendency of this Second Appeal, I made efforts to see that both the parties are reunited but the husband-appellant was not ready to take the wife-respondent to the matrimonial home in any case though the wife-respondent has shown her willingness to come and live with the husband-appellant. So efforts made by this Court have also failed.

#. The marriage of the appellant and respondent was solemnized on 11.2.81. Since 1st November 1981, there is no dispute that both of them are living separately.

#. It is not in dispute that from this wedlock they are not having any issue.

#. The husband-appellant filed H.M.P. No.36/85 for getting divorce from respondent-wife on the ground that she has deserted him for continuous period of not less than two years immediately preceding the presentation of the petition. This petition was dismissed by the trial court on 28th March 1988. The husband-appellant filed Regular Civil Appeal No.19/88 against the judgment of the trial Court which came to be decided on 16th December 1992 by the 2nd Joint District Judge, Ahmedabad (Rural). This Appeal was dismissed. Hence this Second Appeal before this Court.

#. After the talks of reconciliation and compromise failed on 4th August 1998, both, appellant and respondent filed a joint application under Section 13B of the Hindu Marriage Act, 1955, on 17th September 1998, before this Court and prayed therein for dissolution of their marriage by decree of divorce by mutual consent under the aforesaid section of the Hindu Marriage Act, 1955. In

the application, it is mentioned that the husband-appellant shall pay to the wife-respondent, an amount of Rs.1,61,000/= in two installments, the first instalment being Rs.75,000/= by Demand Draft No.068475 dated 16.9.98 issued by State Bank of India, NIE Branch, Ahmedabad. The second instalment of Rs.86,000/= by Demand Draft payable at Veraval will be given in the name of respondent-wife by the appellant-husband and the same will be sent by registered post A.D. before 15.11.98 at her address.

##. The respondent-wife has admitted before this Court that she has been paid Rs.1,61,000/= by the husband-appellant towards her full and final claim of permanent alimony. I have talked to the husband and wife in presence of their learned counsel and I am satisfied that there is no scope of settlement between them. From the facts of this case, I am of the view that marriage of the appellant and respondent has irretrievably broken down and there are not chances of their coming together. The petition for divorce on the ground of desertion has been filed by the husband way back in the year 1985. The parties are living separately for over a period of more than seventeen years. I do not consider it to be necessary to undergo and observe the minimum period of waiting in the case of dissolution of marriage of the spouse for grant of decree of divorce by mutual consent as provided under Section 13B of the Hindu Marriage Act, 1955. The wife has also taken Rs.1,61,000/= towards the full and final settlement of permanent alimony and that amount in fact has been paid by the plaintiff-appellant-husband and that is another ground on the basis of which it is clearly borne out that wife is also in agreement for immediate grant of divorce decree in the matter.

##. In the facts aforesaid, it is a case where the parties are living separately for a period of more than seventeen years and they have not been able to live together and they have mutually agreed that their marriage should be dissolved. In pursuance of the mutual agreement, the appellant-husband has also paid, as aforesaid, a sum of Rs.1,61,000/= to the respondent-wife.

So all the necessary ingredients of grant of divorce by mutual consent are fulfilled in the present case. The averments made in the petition are true and both the parties have admitted of filing of this joint application for divorce by mutual consent.

##. The amount of interim maintenance as ordered to be paid to the respondent-wife by the courts below during

the pendency of these proceedings of divorce has been fully paid by the appellant-husband to the respondent-wife and nothing now is due towards this claim.

##. In the result, this application filed by the parties for dissolution of their marriage by a decree of divorce by mutual consent under Section 13B of the Hindu Marriage Act, 1955, deserves to be granted and it is accordingly granted and the marriage of the appellant and respondent solemnized on 11.2.81 is hereby ordered to be dissolved by decree of divorce by mutual consent. This Second Appeal stands disposed of accordingly. The office is directed to draw the decree forthwith.

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[sunil]